

§ 536.46

32 CFR Ch. V (7–1–09 Edition)

through 536.113 (Claims arising overseas) of subpart G of this part. A claim is not payable if it:

(a) Is based upon an act or omission of an employee of the U.S. government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid. This exclusion does not apply to a non-combat activity claim.

(b) Is based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the government, whether or not the discretion is abused. This exclusion does not apply to a noncombat activity claim.

(c) Arises out of the loss, mis-carriage, or negligent transmission of letters or postal matters. This exclusion is not applicable to registered or certified mail claims under subpart C of this part. See § 536.34(i).

(d) Arises in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any customs or other law enforcement officer. See 28 U.S.C. 2680(c).

(e) Is cognizable under the SIAA (46 U.S.C. app. 741–752), the PVA (46 U.S.C. app. 781–790), or the AEA (46 U.S.C. app. 740). This exclusion does not apply to subparts C, F, H or J of this part.

(f) Arises out of an act or omission of any federal employee in administering the provisions of the Trading with the Enemy Act, 50 U.S.C. app. 1–44.

(g) Is for damage caused by the imposition or establishment of a quarantine by the United States.

(h) Arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights, except for acts or omissions of investigation of law enforcement officers of the U.S. government with regard to assault, battery, false imprisonment, false arrest, abuse of process or malicious prosecution. This exclusion also does not apply to a health care provider as defined in 10 U.S.C. 1089 and § 536.80 of this part, under the conditions listed therein.

(i) Arises from the fiscal operations of the U.S. Department of the Treasury

or from the regulation of the monetary system.

(j) Arises out of the combatant activities of U.S. military or naval forces, or the Coast Guard during time of war.

(k) Arises in a foreign country. This exclusion does not apply to subparts C, E, F, H, J or §§ 536.114 through 536.116 (Claims arising overseas) of subpart G of this part.

(l) Arises from the activities of the Tennessee Valley Authority, 28 U.S.C. 2680(l).

(m) Arises from the activities of the Panama Canal Commission, 28 U.S.C. 2680(m).

(n) Arises from the activities of a federal land bank, a federal intermediate credit bank, or a bank for cooperatives, 28 U.S.C. 2680(n).

NOTE TO § 536.45: This topic is more fully discussed in DA Pam 27–162, paragraph 2–39.

§ 536.46 Other exclusions.

(a) *Statutory employer.* A claim is not payable under any subpart if it is for personal injury or death of any contract employee for whom benefits are provided under any workers' compensation law, if the provisions of the workers' compensation insurance are retrospective and charge an allowable expense to a cost-type contract, or if precluded by state law. See Federal Tort Claims Handbook (FTCH), section II, D7 (posted on the Web at <https://www.jagcnet.army.mil/laawsxri/cds.nsf>. Select the link "Claims" under "JAG Publications.") The statutory employer exclusion also applies to claims that may be covered by the Defense Bases Act, 42 U.S.C. 1651–1654.

(b) *Flood exclusion.* Within the United States a claim is not payable if it arises from damage caused by flood or flood waters associated with the construction or operation of a COE flood control project, 33 U.S.C. 702(c). See DA Pam 27–162, paragraph 2–40.

(c) *ARNG property.* A claim is not payable under any subpart if it is for damage to, or loss of, property of a state, commonwealth, territory, or the District of Columbia caused by ARNG personnel, engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, or 505, who are assigned to a unit maintained

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by that state, commonwealth, territory, or the District of Columbia. See DA Pam 27-162, paragraph 2-41.

(d) *Federal Disaster Relief Act*. Within the United States a claim is not payable if it is for damage to, or loss of, property or for personal injury or death arising out of debris removal by a federal agency or employee in carrying out the provisions of the Federal Disaster Relief Act, 42 U.S.C. 5173. See DA Pam 27-162, paragraph 2-42.

(e) *Non-justiciability doctrine*. A claim is not payable under any subpart if it arises from activities that present a non-justiciable political question. See DA Pam 27-162, paragraph 2-43.

(f) *National Vaccine Act*. (42 U.S.C. 300aa-1 through 300aa-7). A claim is not payable under any subpart if it arises from the administration of a vaccine unless the conditions listed in the National Vaccine Injury Compensation Program (42 U.S.C. 300aa-9 through 300aa-19) have been met. See DA Pam 27-162, paragraph 2-17c(6)(a).

(g) *Defense Mapping Agency*. A claim is not payable under any subpart if it arises from inaccurate charting by the Defense Mapping Agency, 10 U.S.C. 456. See FTCH section II, B4s (Web address at paragraph (a) of this section).

(h) *Quiet Title Act*. Within the U.S., a claim is not payable if it falls under the Quiet Title Act 28 U.S.C. 2409a.

(i) *Defense Bases Act*. A claim arising outside the United States is not payable if it is covered by the Defense Bases Act, 42 U.S.C. 1651-1654.

NOTE TO § 536.46: See parallel discussion at DA Pam 27-162, paragraphs 2-40 through 2-43.

§ 536.47 Statute of limitations.

To be payable, a claim against the United States under any subpart, except §§ 536.114 through 536.116 (Claims arising overseas), must be filed no later than two years from the date of accrual as determined by federal law. The accrual date is the date on which the claimant is aware of the injury and its cause. The claimant is not required to know of the negligent or wrongful nature of the act or omission giving rise to the claim. The date of filing is the date of receipt by the appropriate federal agency, not the date of mailing. See also § 536.26(a) and parallel discussion at DA Pam 27-162, paragraph 2-44.

§ 536.48 Federal employee requirement.

To be payable, a claim under any subpart except subpart K of this part, §§ 536.153 through 536.157 (Claims involving tortfeasors other than non-appropriated fund employees), must be based on the acts or omissions of a member of the armed forces, a member of a foreign military force within the United States with which the United States has a reciprocal claims agreement, or a federal civilian employee. This does not include a contractor of the United States. Apply federal case law for interpretation. See parallel discussion at DA Pam 27-162, paragraph 2-46.

§ 536.49 Scope of employment requirement.

To be payable, a claim must be based on acts or omissions of a member of the armed forces, a member of a foreign military force within the United States with which the United States has a reciprocal claims agreement, or a federal employee acting within the scope of employment, except for subparts E, J, or subpart K of this part, §§ 536.153 through 536.157 (Claims involving tortfeasors other than non-appropriated fund employees). A claim arising from noncombat activities must be based on the armed service's official activities. Excluded are claims based on vicarious liability or the holder theory in which the owner of the vehicle is responsible for any injury or damage regardless of who the operator was. See parallel discussion at DA Pam 27-162, paragraph 2-46.

§ 536.50 Determination of damages—applicable law.

(a) *The Federal Tort Claims Act*. The whole law of the place where the incident giving rise to the claim occurred, including choice of law rules, is applicable. Therefore, the law of the place of injury or death does not necessarily apply. Where there is a conflict between local law and an express provision of the FTCA, the latter governs.

(b) *The Military Claims Act or National Guard Claims Act*. See subparts C and F of this part. The law set forth in § 536.80 applies only to claims accruing on or after September 1, 1995. The law of the